

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	DA 03-4112
Petition of ALLTEL Communications, Inc.)	
for Consent to Redefine the Service Areas of)	
Rural Telephone Companies in the State of)	
Michigan)	
)	

REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.

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January 29, 2004

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ALLTEL Communications, Inc. (“ALLTEL”), pursuant to the Commission’s public notice (“Public Notice”),¹ replies to comments filed by CenturyTel, Inc. (“CenturyTel”), the Michigan Exchange Carriers Association (“MECA”),² and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)³ in opposition to ALLTEL’s petition for Commission consent to redefine the service areas of certain rural

¹ FCC Public Notice, *The Wireline Competition Bureau Seeks Comment on ALLTEL’s Petition to Redefine Rural Telephone Company Service Areas in the State of Michigan*, CC Docket No. 96-45, DA 03-4112 (Dec. 30, 2003).

² Comments of CenturyTel, Inc., *Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan*, CC Docket No. 96-45, DA 03-4112 (Jan. 14, 2004) (“CenturyTel Comments”); Comments of the Michigan Exchange Carriers Association, *Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan*, CC Docket No. 96-45, DA 03-4112 (Jan. 12, 2004) (“MECA Comments”).

³ OPASTCO filed late opposing comments, mislabeled “Reply Comments,” on January 27, 2004. See Reply Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, *Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan*, CC Docket No. 96-45, DA 03-4112 (Jan. 27, 2004) (“OPASTCO Reply Comments”).

telephone companies in Michigan on a wire center-by-wire center basis (the “Petition”).⁴ The opposing comments (collectively, “Oppositions”) are simple, if not rote, recitations of the now tired themes rehashed by rural incumbent carriers in a blatant attempt to prevent wireless carriers from obtaining universal service support and to obstruct the provision of competitive and alternative services to consumers. Accordingly, the Commission should expeditiously grant the Petition.

I. INTRODUCTION AND SUMMARY.

The ALLTEL family of companies provides diversified telecommunications services, including local exchange service, interexchange service and wireless services. ALLTEL is currently both a recipient of universal service support as a local exchange carrier (“LEC”) and a contributor to universal service funding as wireline and wireless carrier. Consequently, ALLTEL has a number of perspectives on the complex funding needs of carriers serving high-cost areas. ALLTEL affiliates encompass both rural and non-rural wireline incumbent LECs (“ILECs”), as well as its wireless service operators. In view of this broad-based experience, ALLTEL, after full consideration of all aspects of the impact of seeking designation as an eligible telecommunications carrier (“ETC”) on universal service support and competition, concluded that the public interest would be well served if it were to be designated an ETC in Michigan.

Pursuant to the Communications Act of 1934, as amended (the “Act”), the Michigan Public Service Commission (“MPSC”) designated ALLTEL as an ETC throughout its cellular service area in Michigan and concluded that the study areas of the rural Michigan ILECs (the “Rural ILECs”) partially served by ALLTEL’s cellular operations should be redefined on a wire

⁴ Petition of ALLTEL Communications, Inc. for Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan, CC Docket No. 96-45 (Dec. 17, 2003) (the “Petition”).

center-by-wire center basis (“*MPSC Decision*”).⁵ The Petition seeks this Commission’s concurrence in the MPSC’s service area redefinition decision.

Subsequent to the release of the Public Notice, ALLTEL determined that it had mistakenly included the study areas of Century Telephone Company of Northern Michigan and CenturyTel of Upper Michigan among the ILEC study areas it seeks to redefine. ALLTEL takes this opportunity to clarify that ALLTEL serves the entire study areas of these rural carriers and is not seeking to redefine them. ALLTEL is filing concurrently with this reply an amendment to the Petition removing the study areas of Century Telephone Company of Northern Michigan and CenturyTel of Upper Michigan from the Petition.⁶

CenturyTel, MECA (which includes all of the Rural ILECs, including CenturyTel, as members), and OPASTCO challenge ALLTEL’s Petition, couching their Oppositions as selfless attempts to protect the public interest. The Oppositions, however, distort the objectives and purpose of the universal service support program and the pro-competitive policies established in the Act. The Oppositions ignore the public interest benefits that a redefinition of the Rural ILECs’ service areas would create. ALLTEL demonstrated in the Petition that the requested service area redefinition, in conjunction with its ETC designation, would encourage competition in historically non-competitive markets, extend universal service support to rural Michigan consumers, increase consumer choice, encourage greater economic, technological, and infrastructure development and promote affordable telecommunications services. Furthermore,

⁵ *Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, Case No. U-13765, at 10-12 (Sept. 11, 2003) (“*MPSC Decision*”). A copy of the *MPSC Decision* was attached to the Petition as Exhibit A. The Rural ILECs are Century Telephone - Midwest, Inc., Century Telephone of Michigan, Pigeon Telephone Company, Shiawassee Telephone Company, and Wolverine Telephone Company.

⁶ ALLTEL’s removal of these companies from the Petition raises no new substantive issues or concerns concerning the Petition and, in fact, simplifies the Commission’s consideration. Furthermore, because no discrepancy now exists between the study areas for which the MPSC approved redefinition and those for which approval is sought in this Petition, MECA’s request that the Commission remand the Petition back to the MPSC is moot and should be rejected.

because ALLTEL commits to providing service throughout its licensed service area, redefining the Rural ILECs' service areas will minimize the possibility of deliberate or inadvertent cream skimming.⁷ The relief sought here thus would level the competitive playing field.

The Oppositions also ignore well established precedent governing ETC-related petitions. The Commission is committed to a speedy resolution of redefinition petitions such as ALLTEL's, so that the benefits derived from redefining the service areas of rural telephone companies are not unduly delayed. In an attempt to further delay ALLTEL's receipt of high-cost support, the Oppositions raise multiple collateral arguments that are relevant only to the issue of ALLTEL's ETC designation and which have been rejected in the *MPSC Decision* or for which the Commission is an inappropriate forum. The Commission should not allow collateral arguments to distract it from its commitment to rule promptly on redefinition petitions. The Commission has granted all of the redefinition petitions on which it has ruled, and the Oppositions fail to demonstrate why the Commission should treat ALLTEL's Petition any differently. Accordingly, ALLTEL urges that the Petition be granted expeditiously for ultimately, it will be consumers who are hurt by any delay borne of the Rural ILECs' dilatory tactics.

II. STAYING CONSIDERATION OF ALLTEL'S PETITION UNTIL THE JOINT BOARD HAS CONCLUDED ITS REVIEW OF THE ETC DESIGNATION PROCESS WOULD DISSERVE THE PUBLIC INTEREST.

A. CenturyTel's and OPASTCO's Procedural Arguments Have Been Rejected.

CenturyTel and OPASTCO argue that any decision concerning the Petition must await the recommendations of the Federal-State Joint Board on universal service ("Joint Board"), and Commission resolution of the issues raised in the pending Joint Board deliberations, concerning ETC designation procedures and the distribution of universal service support to ETCs ("*Joint*

⁷ See *infra* Part III.A.

Board Review”).⁸ To the extent that ETC designation precedents have any relevance to ALLTEL’s Petition, however, they rebut the opponents’ procedural arguments. The *Joint Board Review* addresses issues of general *future* applicability that are outside the scope of the instant proceeding. Commission precedents are clear that the prospect of future changes cannot be allowed to delay Commission consideration of ALLTEL’s narrow request to redefine the service areas of the Rural ILECs under *today*’s existing rules.

The Commission has repeatedly refused to suspend or stay proceedings concerning ETC matters pending resolution of the ETC and universal service policy issues being considered in the *Joint Board Review*. For example, in *Cellular South* and *RCC Holdings*, the Commission concluded that concerns raised by commenters that are generally applicable to the universal service mechanism “are beyond the scope of this Order, which designates a particular carrier as an ETC.”⁹ Similarly, the Commission has determined that suspension of an application until the Joint Board issued its recommendation would “unnecessarily delay resolution of this matter.”¹⁰ The Commission also has recognized that “excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas.”¹¹

⁸ See *Federal-State Joint Board on Universal Service*, Order, 17 FCC Rcd 22642 (2002) (“*Joint Board ETC Order*”); FCC Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC designation Process*, 18 FCC Rcd 1941 (2003) (“*Joint Board ETC Notice*”) (collectively, “*Joint Board Review*”).

⁹ *Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, 24405-06 (WCB 2002) (“*Cellular South*”); *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532, 23533 (“*RCC Holdings*”).

¹⁰ *RCC Holdings*, 17 FCC Rcd at 23535 n.27 (citing *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, 15 FCC Rcd 12208, 12265 (2000) (“*Promoting Deployment*”).

¹¹ *Promoting Deployment*, 15 FCC Rcd at 12255-56.

CenturyTel and OPASTCO fail to demonstrate any persuasive reason for the Commission to revisit settled policy. Furthermore, the Commission has said it will “complete consideration of any proposed definition of a service area promptly.”¹² The Commission should reaffirm this commitment by rejecting their request to stay consideration of the Petition.

Moreover, Commission rules and policies are continuously examined and improved to reflect changes in the market. In fact, reexamination is statutorily required for all regulations issued under the Telecommunications Act of 1996 on a biennial basis.¹³ If the Commission were to follow CenturyTel’s and OPASTCO’s logic that all proceedings should be stayed when rules or policies affecting those proceedings are subject to a pending rulemaking or other review, few if any decisions would ever be reached.

Furthermore, the primary focus of the *Joint Board Review* concerns issues unrelated to redefining the service areas of rural carriers. The Joint Board is considering how “the level of disaggregation of support” should impact requests for ETC status,¹⁴ but there is no indication that the Joint Board will recommend that the Commission modify its current policies and standards for redefining the service areas of rural carriers. In light of these considerations and the uncertainty attending any contentious policy rulemaking, there is even less reason to await the outcome of the *Joint Board Review* before acting on this Petition.

Even if the *Joint Board Review* does modify the distribution of universal service funding to wireless ETCs and the criteria for defining ETC and ILEC service areas, any changes will be applied to ALLTEL and all other affected carriers at that time. Future modifications to the Commission’s universal service support rules accordingly provide no basis to delay a competitive ETC’s request to redefine the service areas of rural carriers under existing policies.

¹² *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8881 (1997) (“*Universal Service Order*”).

¹³ 47 U.S.C. § 161.

¹⁴ See *Joint Board ETC Order*, 17 FCC Rcd at 22647; *Joint Board ETC Notice*, 18 FCC Rcd at 1955-56.

Finally, the recent issuance of the *Virginia Cellular* order stands as a *de facto* rejection of all of CenturyTel's and OPASTCO's procedural arguments and reflects a recognition that redefinition petitions can be addressed before the *Joint Board Review* concludes.¹⁵

B. The Act, Commission Rules, Joint Board Recommendations And Fair Competition Provide The Public Interest Basis For The Redefinition Of Rural ILEC Service Areas On A Wire Center Basis.

Section 214(e)(5) of the Act allows the Commission and state agencies to redefine the service areas of rural ILECs on a basis other than their study areas “after taking into account recommendations of [the Joint Board].”¹⁶ MECA mistakenly claims that the Joint Board has recommended that ETC service areas must continue to mirror the rural carriers’ study areas.¹⁷ Contrary to MECA’s claims, the Joint Board recommended, and the Commission determined, that rural carriers’ service areas remain their study areas *unless* those areas are redefined pursuant to Section 214(e) of the Act.¹⁸ MECA fails to acknowledge that the Joint Board also has issued comprehensive guidelines and recommendations for the Commission and states to consider in their review of petitions to redefine rural carrier service areas.¹⁹ As demonstrated in the Petition, the MPSC took these recommendations into account, including any administrative

¹⁵ *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338, ¶¶ 40-45 (rel. Jan. 22, 2004) (granting a redefinition request) (“*Virginia Cellular*”).

¹⁶ 47 U.S.C. § 214(e)(5).

¹⁷ MECA Comments at 4.

¹⁸ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 179-80 (1997) (“*Recommended Decision*”); *Universal Service Order*, 12 FCC Rcd at 8791-92.

¹⁹ *Recommended Decision*, 12 FCC Rcd at 179-80. The Commission has recognized that state commissions are best positioned to determine whether a redefinition request should be approved. *See, e.g., see also Virginia Cellular* ¶ 45 (“[T]he Virginia Commission is uniquely qualified to examine the redefinition proposal because of its familiarity with the rural service areas in question.”).

burdens that may be placed on rural incumbent carriers, when it granted ALLTEL ETC status in Michigan and approved the redefinition of the Rural ILECs' study areas.²⁰

OPASTCO argues that ALLTEL's request to redefine the Rural ILECs' service areas had to be considered and approved by both the MPSC and this Commission before the MPSC could designate ALLTEL as an ETC in its licensed service areas in Michigan.²¹ Neither the Act nor the Commission's rules require redefinition petitions to be approved before ETC designations. OPASTCO cites no relevant law or policy to support this contention.²² Furthermore, such a requirement is contrary to the procedures that the states and this Commission have followed in previous cases, including cases in which a state commission first granted ETC status and the ETC's redefinition request and this Commission then approved the state commission's redefinition decision.²³ OPASTCO's suggestion defies all logic. There would be no reason for competitive carriers to seek the redefinition of service areas for which they had not yet received ETC status. It is OPASTCO that is putting "the cart before the horse."²⁴

²⁰ *MPSC Decision* at 14-15; *Petition* at 7-12.

²¹ OPASTCO Reply Comments at 5-6.

²² OPASTCO erroneously cites Section 214(e)(5) of the Act for support. That provision, however, specifically provides that a rural ILEC's service area may be redefined on a basis other than its study area. It does not establish a specific sequence for seeking ETC status and redefinition.

²³ See, e.g., *Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Co., Citizens Communications Co. of the White Mountains, and CenturyTel of the Southwest, Inc. on Tribal Lands within the State of Arizona*, 16 FCC Rcd 3558, 3559 (WCB 2001) (approving a state commission's redefinition decision) ("*Smith Bagley Arizona*"); *Smith Bagley, Inc. Petitions to Redefine the Service Area of Table Top Telephone Company on Tribal Lands within the State of Arizona*, 16 FCC Rcd 7559, 7560 (WCB 2001) (same) ("*Smith Bagley Table Top*"); *Smith Bagley, Inc. Petitions to Redefine the Service Area of CenturyTel of the Southwest, Inc. in the State of New Mexico*, 17 FCC Rcd 4609, 4610 (WCB 2002) (same) ("*Smith Bagley New Mexico*"); see also *RCC Holdings*, 17 FCC Rcd at 23536 (simultaneously designating ETC status and granting a redefinition request); *Cellular South*, 17 FCC Rcd at 24397 (same); *Virginia Cellular* ¶ 45 (same).

²⁴ OPASTCO Reply Comments at 6.

Contrary to CenturyTel's assertions, the Commission also has the authority and discretion to grant ALLTEL's Petition without a written order. Pursuant to Section 54.207(c)(3)(ii) of the Commission's rules, if the Commission does not act on a redefinition petition within ninety days of the public notice seeking comment on the petition, it will be deemed approved.²⁵ This rule ensures that consideration of a redefinition petition, and the resulting competitive benefits, are not unduly delayed. In effect, Section 54.207 allows the Commission to issue the equivalent of a summary or "bench" decision where, as in this case, no meritorious oppositions have been raised. The Commission has utilized the same procedures for other redefinition petitions (which ordered the service areas of other CenturyTel affiliates to be redefined).²⁶ In addition, simply because the Commission does not issue a written decision granting a redefinition petition does not mean that the Commission did not take into consideration the recommendations of the Joint Board and all pleadings filed in response to the petition. If, however, the Commission determines that a written decision in this case is appropriate, it should issue its decision promptly.

III. REDEFINING THE RURAL ILECS' SERVICE AREAS ON A WIRE CENTER BASIS IS APPROPRIATE IN THIS CASE.

A. Redefining The Service Areas Of The Rural ILECs Will Minimize Concerns That ALLTEL Will Engage In Deliberate Or Inadvertent "Cream Skimming."

CenturyTel and OPASTCO assert, without any factual or legal support, that redefining the service areas of the Rural ILECs will allow ALLTEL to pick and choose only the lowest cost

²⁵ 47 C.F.R. § 54.207(c)(3)(ii).

²⁶ See, e.g., *Smith Bagley Arizona*, 16 FCC Rcd at 3558-61; *Smith Bagley Table Top*, 16 FCC Rcd at 7559-62; *Smith Bagley New Mexico*, 17 FCC Rcd at 4609-11. The Commission also has streamlined its application procedures for domestic and international Section 214 authorizations such that applications are automatically granted after a certain period of time unless the applicants are otherwise notified by the Commission.

wire centers in Michigan to serve.²⁷ As ALLTEL explained in its Petition, it has committed to provide service throughout its entire licensed service area, and thus, as in prior cases, its inability to completely serve the study areas of some of the Rural ILECs does not raise cream skimming concerns. ALLTEL is not “picking and choosing” which areas to serve. The Commission concluded in *RCC Holdings* and *Cellular South* that similar facts demonstrated that there was little danger of intentional or even inadvertent rural cream skimming.²⁸ Furthermore, as also indicated in the Petition, some of the Rural ILECs already have filed disaggregation plans. Those Rural ILECs that have not yet filed disaggregation plans have the option of filing such plans so that they can target per-line support below the study area level and prevent wireless carriers from averaging high-cost support across all lines within an ILEC’s study area.²⁹ The Commission has stated repeatedly that disaggregating and targeting high-cost support eliminates any incentive on the part of wireless carriers to cream skim.³⁰

Accordingly, CenturyTel’s and OPASTCO’s concerns about cream skimming are misplaced. Rather, their oppositions to the Petition reflect an intent to delay additional

²⁷ CenturyTel also claims that ALLTEL’s Petition cannot be granted because additional time is necessary for its only subsidiary that has yet to disaggregate its study area, CenturyTel of Northern Michigan (“CTNM”), to determine whether it should also disaggregate its high-cost support at the wire center level and, if so, to seek the necessary approvals. CenturyTel Comments at 6-7. As explained above, CTNM was mistakenly included in the Petition as one of the rural ILECs whose study areas ALLTEL is seeking to redefine. Because CTNM is not one of the Rural ILECs, CenturyTel’s claim that it needs time to review its disaggregation options is moot.

²⁸ *RCC Holdings*, 17 FCC Rcd at 23543-44, 23547-48; *Cellular South*, 17 FCC Rcd at 24404-05, 24407. See also *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, 15 FCC Rcd 9921, 9928 (CCB 1999) (“Washington Order”) (concluding that redefining rural ILEC service areas in Washington addressed opportunities for cream skimming by competitors).

²⁹ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244, 11302 (2001) (“RTF Order”).

³⁰ See, e.g., *RCC Holdings*, 17 FCC Rcd at 23544; *Cellular South*, 17 FCC Rcd at 24405.

competition in Michigan as long as possible. The Commission should reject these cream skimming arguments.

B. Redefining The Service Areas Of The Rural ILECs Into Separate Exchanges Is Appropriate.

The Commission should reject CenturyTel's request that it adopt a different redefinition plan from that approved by the MPSC. According to CenturyTel, its rural affiliates that have already chosen to disaggregate universal service support chose the "Path 3" option and have divided each of their study areas into two support zones – one which includes lower cost wire centers and the other higher cost wire centers. CenturyTel argues that the Commission should "partition the current service area into two zones and require ALLTEL to serve *all* the wire centers within [each support] zone."³¹ In effect, CenturyTel asks the Commission to require ALLTEL to serve the *entire study area* of each of CenturyTel's rural ILEC affiliates. As further discussed below in Section V.B., however, a wireless ETC is not required to serve an entire ILEC study area.

CenturyTel also is mistaken that a two-zone service area would decrease the chance that universal service support is misdirected.³² As previously discussed, ALLTEL seeks to redefine the Rural ILECs' study areas on a wire center basis so that ALLTEL receives support only for those wire centers in which it provides service. CenturyTel's concerns that support may be misdirected are already satisfied by ALLTEL's proposed redefinition. As previously noted, the MSPC is uniquely positioned to consider the merits of, and has already approved, ALLTEL's redefinition request.³³ The Commission also recently approved in *Virginia Cellular* a redefinition decision in which each wire center within the study areas of various rural ILECs was designated as a separate service area so that a wireless ETC could receive the appropriate

³¹ CenturyTel Comments at 5 (emphasis added).

³² *Id.*

³³ See *Virginia Cellular* ¶ 45.

universal service support for those wire centers.³⁴ The Commission should similarly approve the MPSC's redefinition decision.

Furthermore, contrary to CenturyTel's assertions, ALLTEL's redefinition plan is not inconsistent with the Path 3 disaggregation plans chosen by CenturyTel's rural affiliates. CenturyTel admits that although its rural affiliates previously chose to establish two support zones in their respective study areas, it "was able to calculate relative cost down to the wire center" and that each of the zones are "comprised of wire centers with relatively similar cost characteristics."³⁵ Also, carriers have the option under Path 3 of disaggregating support either to two cost zones or to the wire center level.³⁶ Therefore, CenturyTel's rural affiliates can readily change how they disaggregate costs under Path 3 if they choose to do so, especially given that they already have determined their costs on a wire center basis. Accordingly, the Commission should reject CenturyTel's proposal that it adopt a different redefinition plan from the MPSC approved plan.

IV. REDEFINING THE SERVICE AREAS OF THE RURAL ILECS SERVES THE PUBLIC INTEREST.

ALLTEL demonstrated in the Petition that redefining the Rural ILECs' service areas on a wire center basis serves the public interest. Redefining the Rural ILECs' study areas is necessary in order for ALLTEL to provide ETC-supported services and to receive universal service support for such services.³⁷ Specifically, the public interest is benefited by: (1) increasing competition; (2) increasing consumer choice; (3) extending universal service support to rural Michigan consumers; (4) encouraging greater economic, technology and infrastructure development; and

³⁴ See *id.* ¶ 40.

³⁵ CenturyTel Comments at 5.

³⁶ 47 C.F.R. § 54.315(d).

³⁷ For example, ALLTEL cannot provide toll limitation services for lifeline customers until the service areas of the Rural ILECs are redefined because only carriers designated as ETCs can participate in the Lifeline program.

(5) promoting affordable telecommunications services.³⁸ ALLTEL also showed that redefining the Rural ILECs' service areas: (a) will minimize the incentive for ALLTEL to engage in deliberate or inadvertent cream skimming; (b) will not harm or affect the Rural ILECs' status as rural telephone companies; and (c) will not be administratively burdensome for the Rural ILECs.³⁹

Although OPASTCO dismisses these benefits as "vague generalities,"⁴⁰ the Commission, nonetheless, has found the same benefits to satisfy the public interest.⁴¹ Moreover, contrary to CenturyTel's assertions, the MPSC, in concluding that redefining the service areas of the Rural ILECs would serve the public interest, took into account the impact that service area redefinition would have on the Rural ILECs.⁴² The MPSC also recognized that designating ALLTEL as an ETC, which would require a redefinition of the Rural ILECs' service areas, provides competitive benefits to consumers. Competition drives down rates and encourages carriers to develop new services and technologies and to operate more efficiently and effectively.⁴³

According to CenturyTel, there are no competitive benefits to designating ALLTEL as an ETC and redefining the Rural ILECs' service areas because ALLTEL already provides wireless services in Michigan. This argument, however, ignores that some ETC-supported services, such as Lifeline, can be provided only by ETCs. ALLTEL thus cannot provide Lifeline services throughout its licensed service area unless and until it is designated as an ETC throughout its

³⁸ Petition at 6-7; *MPSC Decision* at 11.

³⁹ Petition at 6-12; *MPSC Decision* at 11, 13-15.

⁴⁰ OPASTCO Reply Comments at 6.

⁴¹ See, e.g., *RCC Holdings*, 17 FCC Rcd at 23540-45, 23547-48; *Cellular South*, 17 FCC Rcd at 24402-07; *Virginia Cellular* ¶¶ 40-45.

⁴² *MPSC Decision* at 14-15.

⁴³ *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133, 18138-39 (2001).

licensed service area, which is dependent on the proposed service area redefinition.

Furthermore, the Rural ILECs have long enjoyed a competitive advantage over all other carriers by receiving universal service subsidies. ALLTEL's designation as an ETC throughout its licensed service area will put it on an equal footing with the Rural ILECs, and it will be able to compete more effectively against them.⁴⁴ As a result, the public will reap the benefits from that competition and increased consumer choice among alternative services, including mobility.

V. THE COMMISSION SHOULD REJECT ARGUMENTS THAT REQUIRE IT TO SECOND-GUESS THE MPSC'S ETC DESIGNATION DECISION.

The Oppositions raise other collateral arguments that are relevant only to the issue of ALLTEL's designation as an ETC or are inappropriate in this forum. Thus, they are inapplicable to the issue presented in the Petition – *i.e.*, whether the Commission should approve ALLTEL's request to redefine the service areas of the Rural ILECs. The MPSC already has determined that ALLTEL meets the criteria established by the Act to be designated as an ETC in its service area in Michigan.⁴⁵ The Commission thus should disregard these collateral and irrelevant arguments.

A. The Commission Should Reject MECA's Request That The Commission Remand ALLTEL's Petition To The MPSC.

MECA's assertion that ALLTEL's Petition be remanded back to the MPSC because the MPSC did not provide proper notice of ALLTEL's request to redefine the service areas of the Rural ILECs should be rejected.⁴⁶ Whether the notice provided by the MPSC in ALLTEL's case met state requirements is an issue that must be raised before the MPSC or state courts and is

⁴⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15497, 15506-07 (1996).

⁴⁵ *MPSC Decision* at 11-13.

⁴⁶ MECA Comments at 3-4. The notice provided by the MPSC referenced ALLTEL's petition for designation as an ETC pursuant to Section 214 of the Act for the purpose of receiving federal universal service support in Michigan. ALLTEL requested that the study areas of the Rural ILECs be redefined on a wire center basis as a part of its ETC petition. *See* MECA Comments at Exhibit B.

misdirected to this Commission. Furthermore, ALLTEL's redefinition request was an integral part of its state application and the MPSC proceeding. MECA, on behalf of its members, received notice of the MPSC proceeding and actively participated in it, attending pre-hearing conferences and filing testimony, briefs and reply briefs.⁴⁷ MECA's claim that "interested parties" did not receive proper notice of and were prevented from participating in the MPSC's proceeding is disingenuous and should be rejected.

B. ALLTEL Is Not Required To Serve The Entire Study Areas Of Each Of The Rural ILECs' In Order To Receive High-Cost Universal Service Support.

CenturyTel's and OPASTCO's assertion that the service areas of the Rural ILECs need not be redefined because ALLTEL is required to serve the entire study area of each of the Rural ILECs⁴⁸ is in fact a challenge to ALLTEL's designation as an ETC in Michigan. CenturyTel and MECA, on behalf of the Rural ILECs, participated in the MPSC's proceeding addressing ALLTEL's ETC application, and raised many of the same arguments set forth in the Oppositions.⁴⁹ The *MPSC Decision* rejected these efforts to block ALLTEL from receiving ETC status in Michigan and properly granted its request for ETC status. The Communications Act effectively precludes the Commission from reviewing state ETC designation decisions.⁵⁰ Thus, CenturyTel's challenge to that decision should be brought in the proper forum, not before this Commission.

Moreover, CenturyTel's and OPASCTO's argument that ALLTEL could provide service throughout the Rural ILECs' study areas by reselling the wireless and wireline services of other

⁴⁷ *MPSC Decision* at 2-3, 7-10.

⁴⁸ CenturyTel Comments at 7-9; OPASCTCO Reply Comments at 3-5.

⁴⁹ *See MPSC Decision* at 3-10.

⁵⁰ *See* 47 U.S.C. §§ 214(e)(2), 214(e)(6) (authorizing the Commission to consider ETC designation requests only when a state commission determines that it does not have jurisdiction over the requesting party).

carriers⁵¹ ignores the Commission's extensive precedent concluding that wireless carriers need not serve the entire study area of a rural ILEC to receive ETC status.⁵² The Commission has previously determined that to require competitive ETCs such as wireless carriers to serve the entire study area of a rural ILEC is anti-competitive and not in the public interest.⁵³ As previously noted, ALLTEL will provide those services supported by the universal service mechanism throughout its service area in Michigan and will not avoid providing service to certain portions of the Rural ILECs' service areas that may be high-cost or otherwise undesirable.

Furthermore, one of the underlying goals of the Act and the Commission's rules and policies is to increase facilities-based competition, including rural areas in which high-cost support is available. The Commission has recognized that consumers and the telecommunications market are better and more efficiently served by "increased facilities-based competition among wireless service providers and between wireless providers and other platforms."⁵⁴ Such competition "encourage[s] the development of broadband services for all Americans, ... enhance[s] economic opportunities and access for the provision of

⁵¹ CenturyTel Comments at 7-9; OPASCTCO Reply Comments at 3-5.

⁵² See, e.g., *Virginia Cellular* ¶¶ 32, 42; *Universal Service Order*, 12 FCC Rcd at 8879-80; *RCC Holdings*, 17 FCC Rcd at 23545-49; *Cellular South*, 17 FCC Rcd at 24404-05; *Washington Order*, 15 FCC Rcd at 9928; *Smith Bagley Arizona*, 16 FCC Rcd at 3560-61; *Smith Bagley Table Top*, 16 FCC Rcd at 7560-61; *Smith Bagley New Mexico*, 17 FCC Rcd at 4610-11. The Act specifically defines an ETC's service area as the "geographic area established by a State commission... for the purpose of determining universal service obligations and support mechanisms." 47 U.S.C. § 214(e)(5). For regions specifically served by rural ILECs, "service area" refers to the incumbents' study areas unless the Commission and states establish a different service area definition. *Id.* Accordingly, Section 214 contemplates that competitive ETCs might have different service areas from the incumbents.

⁵³ *RCC Holdings*, 17 FCC Rcd at 23547-49; *Universal Service Order*, 12 FCC Rcd at 8879-80.

⁵⁴ *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 20604, 20793 (2003).

communications services by designated entities, and enable[s] development of additional and innovative services in rural areas.”⁵⁵

To require a competitive ETC to resell the service of another carrier, however, rather than using its own facilities, would undermine the Commission’s promotion of facilities-based competition. Moreover, the ETC would have little or no control over the service quality of the underlying carrier. Furthermore, opponents would require a *wireless* ETC to become a *wireline* carrier in those portions of rural ILEC study areas not covered by its wireless licenses simply to conform its service area to that of the incumbent carriers. Such a premise is not technologically neutral, as it would require a wireless carrier to become a competitive LEC and subject to new state and federal regulatory regimes, even though the wireless carrier already satisfies the established criteria for ETC status in its service area.

C. The Michigan PSC Was Not Required To Consider The Impact That ALLTEL’s ETC Designation May Have On The Federal Universal Service Fund.

CenturyTel erroneously claims that the MPSC should have evaluated the impact that ALLTEL’s ETC designation would have on the federal universal service fund.⁵⁶ As previously noted, the MPSC conducted a detailed analysis to determine whether granting ALLTEL ETC status in rural areas was in the public interest. Despite CenturyTel’s contention, Section 214 of the Act does not specifically impose on the MPSC the obligation to evaluate the condition of the federal universal service fund. Rather, it simply requires the MPSC to determine whether designating ALLTEL as an ETC in rural study areas is in the public interest. The MPSC’s conclusion that it will defer to any findings the Commission makes in the *Joint Board Review* was appropriate and within its authority.⁵⁷ CenturyTel simply attempts to shift the

⁵⁵ *Id.* at 20607, 20623.

⁵⁶ CenturyTel Comments at 8.

⁵⁷ *MPSC Decision* at 12-13.

Commission's focus away from the sole issue presented in the Petition – whether the study areas of the Rural LECs should be redefined.

D. The Michigan PSC Concluded That State Carrier-Of-Last-Resort Obligations Do Not Apply In This Case.

The Commission should reject CenturyTel's unsupported claim that the Petition must be denied because the MPSC did not condition ALLTEL's ETC designation on its compliance with the state's carrier-of-last-resort obligations.⁵⁸ The MPSC specifically concluded that ALLTEL was not subject to these obligations because the MPSC does not have the statutory authority to impose this particular state requirement.⁵⁹ How state-specific rules are applied by the MPSC is solely within the jurisdiction of the MPSC and the state legislature. This Commission has no jurisdiction over states' rules and regulations and cannot impose state regulations on ALLTEL when the MPSC chose not to do so. CenturyTel fails to provide any legal support for such a proposition. Moreover, the Commission's rules do not require ETCs to serve as carriers-of-last-resort. The Petition concerns only whether the Commission agrees with the plan to redefine the Rural ILECs' service areas on a wire center basis. The Rural ILECs must raise any claims about the proper application of state carrier-of-last-resort obligations before the state legislature or the MPSC, which already has addressed CenturyTel's argument.

VI. CONCLUSION.

The Rural ILECs remain overwhelmingly dominant in the local service markets in their service areas in Michigan, assisted by high-cost universal service subsidies to retain their dominance against challenges by competitive wireless ETCs, such as ALLTEL, that contribute to that support. The Oppositions' procedural, policy and factual arguments against the Petition are little more than an attempt to retain their exclusive hold on these high-cost subsidies by denying the service area redefinition relief that would enable ALLTEL to receive universal service

⁵⁸ CenturyTel Comments at 9.

⁵⁹ *MPSC Decision* at 13.

support. Accordingly, the Commission should reject these arguments and expeditiously grant ALLTEL's Petition.

Respectfully submitted,

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January 29, 2004

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that a copy of the foregoing **Reply Comments** has been served this 29th day of January 2004 via electronic mail or First Class U.S. Mail (*) on the following:

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